

NOV 24 2004

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE,

PETITIONER,

VS.

KRISTIN M. DRAIN,

RESPONDENT.

CONSENT ORDER

CAUSE NO. A-1596

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Janette L. Adair and Kristin M. Drain ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb.Rev.Stat. §§44-101.01 (Reissue 1998), 44-4047 et seq. (Reissue 1998) and 44-19,106 et seq. (R.S.SUPP.,2003).

2. Respondent was licensed as an insurance agent under the laws of Nebraska at all times material hereto.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Kristin M. Drain, Cause Number A-1596 on October 5, 2004. A copy of the petition was served upon the Respondent at the Respondent's address registered with the Department by certified mail, return receipt requested.

2. Respondent violated Neb. Rev. Stat. §44-19,116(e)(i) (R.S.SUPP.,2002) as a result of the following conduct:

On or about October 12, 2002, NLT disbursed funds as part of a closing transaction on a second mortgage, through Aegis Mortgage, for Danielle and Curtis Edelman. The funds were disbursed prior to the receipt of funds from the lender. NLT never received the funds that were disbursed, and NLT records show a negative file balance in the amount of \$19,318.00.

3. Respondent violated Neb. Rev. Stat. §§44-1525(5)(b) (R.S.SUPP.,2003), 44-4059(1)(g), and 44-4059(1)(h) (R.S.SUPP.,2002) as a result of the following conduct:

- a. In January 2004, First American Title Insurance Company auditor, Paula Clark, conducted a Limited Escrow Review of NLT. Ms. Clark discovered the negative balance file noted in Paragraph 5 above. Respondent informed Ms. Clark that the file was in litigation. Respondent made false statements to Ms. Clark as the file was not in litigation.
- b. On or about January 7, 2004, Ms. Clark sent a letter to Respondent advising that funds should be transferred from the NLT operating account to address the shortage. Respondent subsequently contacted Ms. Clark and Nathan Reisetter, Assistance Vice-President of First American Title Insurance Company, and advised that the shortage had been funded. Respondent made false statements to Ms. Clark and Mr. Reisetter as the shortage was not funded.
- c. On or about January 20, 2004, Mr. Reisetter contacted Petitioner and advised that NLT's "negative balance" was due to a lawsuit, and Mr. Reisetter would be receiving documentation that the negative balance had been cleared. Mr. Reisetter subsequently contacted the Petitioner and advised that the file had been funded. Respondent's false statements and false entries caused Mr. Reisetter to make false statements to the Petitioner.
- d. In January 2004, Respondent faxed copies of a file ledger sheet, showing that funds had been deposited to bring the negative balance file into balance, to Ms. Clark and Mr. Reisetter. Funds had not been deposited to address the negative balance, and the entries on the file ledger sheet were false. Respondent caused the false entries to be placed on the books and records of NLT to make it appear that funds had been deposited to cover the shortage.
- e. In March 2004, Grafton & Associates, P.C. conducted an audit of NLT pursuant to Neb. Rev. Stat. §44-19,116(2) (R.S.SUPP.,2003). Prior to the audit by Grafton & Associates, P.C., Respondent again caused false entries to be placed on the books and records of NLT to make it appear that the negative balance file noted in Paragraph 5 above was in balance.

- f. On or about March 30, 2004, Petitioner received an audit report prepared by Grafton & Associates, P.C. Respondent cause an inaccurate audit report to be filed with the Petitioner, as this report reflected false entries Respondent caused to be placed on the books and records of NLT.

4. Respondent was informed of her right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving her right to a public hearing, Respondent also waives her right to confrontation of witnesses, production of evidence, and judicial review.


5. Respondent admits the allegations stated in Paragraphs 2 and 3 above.

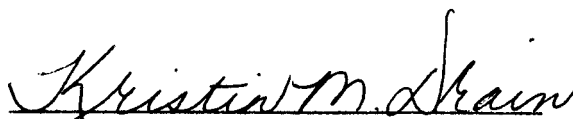
#### CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes a violation of Neb. Rev. Stat. §§44-19,116(e)(i) (R.S.SUPP.,2002), 44-1525(5)(b) (R.S.SUPP.,2003), 44-4059(1)(g), and 44-4059(1)(h) (R.S.SUPP.,2002).

#### CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed by Respondent, Kristin M. Drain, that Respondent's insurance producer's license shall be revoked. Additionally, Respondent is required to return her license to the Department of Insurance within ten (10) business days from the date the Director of the Department of Insurance affixes his signature to this document and approves this consent agreement. In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing his signature below.

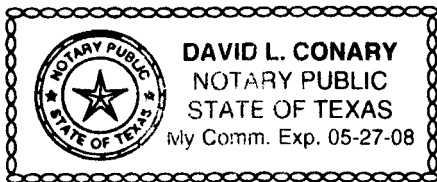
  
Janette L. Adair, #22618  
Attorney for Petitioner  
941 "O" Street, Suite 400  
Lincoln, NE 68508  
(402) 471-2201

  
Respondent  
11/22/04  
Date

11/22/04  
Date

State of Texas )  
County of Collin ) ss.

On this 22nd day of November, 2004, Kristin M. Drain personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be her voluntary act and deed.



David L. Conary  
Notary Public

**CERTIFICATE OF ADOPTION**

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Kristin M. Drain, Cause No. A-1596.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

L. Tim Wagner  
L. TIM WAGNER  
Director of Insurance

11/22/04  
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent, at 1409 South Lamar Street #910, Dallas, TX 75215, by certified mail, return receipt requested on this 24<sup>th</sup> day of November, 2004.

Tracy A. Linder